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The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

BOILERMAKERS NATIONAL ANNUITY
TRUST FUND, on behalf of itself and all
others similarly situated,

Plaintiff,

v.

WAMU MORTGAGE PASS THROUGH
CERTIFICATES, SERIES 2006-ARI *et al.*

Defendants.

DORAL BANK PUERTO RICO, on behalf
of Itself and All Others Similarly Situated,

Plaintiff,

v.

WASHINGTON MUTUAL ASSET
ACCEPTANCE CORPORATION, *et al.*

Defendants.

Master Case No.: C09-0037 (MJP)

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF WAMU
DEFENDANTS' MOTION TO DISMISS**

**NOTE ON MOTION CALENDAR:
May 28, 2010**

*REQUEST FOR JUDICIAL NOTICE
(CV09-0037 MJP)*

HILLIS CLARK MARTIN &
PETERSON, P.S.

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206.623.1745; fax 206.623.7789

1 Defendants WaMu Asset Acceptance Corporation, WaMu Capital Corporation,
2 Washington Mutual Mortgage Securities Corporation, David Beck, Diane Novak, Rolland
3 Jurgens and Richard Careaga (the “WaMu Defendants”) respectfully request that the Court
4 take judicial notice of each of the following documents pursuant to Federal Rule of Evidence
5 201 (“Rule 201”):

6 DISCUSSION

7
8 These documents are the proper subject of judicial notice. The Court may take
9 judicial notice of and consider on a motion to dismiss documents filed with the Securities and
10 Exchange Commission. *See In re Nuko Info. Sys. Sec. Litig.*, 199 F.R.D. 338, 341 (N.D. Cal.
11 2000) (“The Court may take judicial notice of public records outside the pleadings, including
12 SEC filings”). Registration Statements, Prospectuses, and Prospectus Supplements, attached
13 hereto as Exhibits 1-6, 21, 22, and 25 constitute “relevant public disclosure documents filed
14 with the Securities and Exchange Commission.” *Ronconi v. Larkin*, No. C-97-1319, 1998
15 WL 230987, at *1 (N.D.Cal. May 1, 1998). Because it would be “highly impractical and
16 inconsistent with Fed. R. Evid. 201 to preclude a district court from considering such
17 documents when faced with a motion to dismiss a securities action based on allegations of
18 material misrepresentations or omission,” this Court may take judicial notice of these SEC
19 filings for purposes of this motion. *Lovelace v. Software Spectrum, Inc.*, 78 F.3d 1015, 1018
20 n.1 (5th Cir. 1996) (citation omitted); *accord Fla. State Bd. of Admin. v. Green Tree Fin.*
21 *Corp.*, 270 F.3d 645, 663 (8th Cir. 2001).¹

22
23 The Court may also consider documents referred to in the Second Amended
24 Consolidated Complaint (“SAC”). *See In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970,

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26
27 ¹ For the Court’s convenience, and to reduce the volume of documents submitted in connection with the
28 motion to dismiss, the exhibits to this Request for Judicial Notice include excerpts from these SEC filings of the
material cited in the motion to dismiss.

1 986 (9th Cir. 1999). Documents upon which a complaint is based can be considered
2 irrespective of whether plaintiff has chosen to cite or quote them. *See In re Burlington Coat*
3 *Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997) (“Plaintiffs cannot prevent a court
4 from looking at the text[] of the documents on which its claim is based by failing to attach or
5 explicitly cite to them”); *see also, Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998);
6 *In re Metricom Sec. Litig.*, C 01-4085 PJH, 2004 WL 966291, at *7-8 (N.D. Cal. May 4,
7 2004). This provides another basis for judicial notice of the SEC filings, as they are all cited
8 in the SAC. It also provides a basis for judicial notice of the Mortgage Loan Purchase and
9 Sale Agreement attached as Exhibit 23.

10
11 Under FRE 201(d), the court may take judicial notice of facts that are capable of
12 accurate and ready determination by resort to sources whose accuracy cannot reasonably be
13 questioned. This includes information from reliable sources on the internet. *See, e.g.,*
14 *O’Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1224-1225 (10th Cir. 2007) (abuse of
15 discretion for court not to take judicial notice of company’s earnings information posted on
16 website); *Alvara v. Aurora Loan Servs.*, 2009 U.S. Dist. LEXIS 50635, at *3 n. 3 (N.D. Cal.
17 June 15, 2009) (taking judicial notice of chart from Federal National Mortgage Association
18 Website tracking conforming limit for mortgage loans). Plaintiffs’ complaint contains
19 allegations regarding the delinquency rate of the loans underlying the Certificates at issue in
20 this action. Information about the actual delinquency rates on these Certificates is available
21 on the website www.wamusecurities.com, which is a free website available to anyone who
22 submits registration information. Exhibit 7 to this request contains a chart showing, based on
23 information obtained from the website, the portion of delinquent loans (including loans in
24 foreclosure) in the loan pools underlying the Certificates owned by Plaintiffs (WaMu 2006
25 AR5, AR7, AR12, AR16, AR17, AR18, WaMu 2007 HY1, WaMu 2007 OA4, OA5, and
26 WMALT 2007 OA5), both by gross amount and as a percentage of the original and current
27
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1 principal balances of the loans underlying the certificates as of March 2010. Exhibit 8 to this
2 request contains the printouts of the web pages from www.wamusecurities.com from which
3 the information in the chart was obtained. Exhibit 9 to this request is a press release from the
4 Mortgage Bankers Association regarding the delinquency rate on mortgages in the United
5 States at the end of 2009, which states that the delinquency rate (including foreclosures) is
6 15.02%.

7 Plaintiffs also allege that the Rating Agencies downgraded the ratings on the
8 Certificates at issue in this action in February 2009. Attached as Exhibit 10 to this request is a
9 report prepared by Standard & Poor's analyzing downgrades of various mortgage backed
10 securities during that period.

11 The statute of limitations bars certain of Plaintiffs' claims. News articles, press
12 releases, and other noticeable materials written more than one year before Plaintiffs filed their
13 claims are attached to this request as Exhibits 11 to 19.

14 Finally, the Second Amended Complaint and Motion for Leave to Amend are attached
15 as Exhibits 20 and 24.

16 CONCLUSION

17 Both because the SAC includes allegations relating to the delinquencies and ratings
18 downgrades, and because the nature of the information obtained from these internet sources is
19 such that its accuracy cannot reasonably be questioned, the Court should take judicial notice
20 of the attached exhibits.
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28 *REQUEST FOR JUDICIAL NOTICE*
(CV09-0037 MJP) - Page 3 of 4

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For the foregoing reasons, the WaMu Defendants respectfully request that the Court take judicial notice of each of the documents identified above.

DATED this 27th day of April, 2010.

BINGHAM McCUTCHEN LLP David M. Balabanian (<i>Pro Hac Vice</i>) John D. Pernick (<i>Pro Hac Vice</i>) Frank Busch (<i>Pro Hac Vice</i>) Three Embarcadero Center San Francisco, CA 94111-4067 Tel: (415) 393-2544 Fax: (415) 262-9203 Email: david.balabanian@bingham.com john.pernick@bingham.com frank.busch@bingham.com - and - Susan L. Hoffman (<i>Pro Hac Vice</i>) 355 South Grand Avenue, Suite 4400 Los Angeles, CA 90071-3106 Tel: (213) 680-6454 Fax: (213) 680- 6499 Email: susan.hoffman@bingham.com	HILLIS CLARK MARTIN & PETERSON By: <u>/s/ Louis D. Peterson</u> Brian C. Free, WSBA #35788 Louis D. Peterson, WSBA #5776 1221 Second Ave, Suite 500 Seattle, WA 98101-2925 Tel: (206) 470-7646 Email: bcf@hcmp.com ldp@hcmp.com <i>Counsel for Defendants WaMu Asset Acceptance Corporation, WaMu Capital Corporation, Washington Mutual Mortgage Securities Corporation, David Beck, Diane Novak, Rolland Jurgens and Richard Careaga</i>
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Index of Exhibits

Exhibit 1	Registration Statement filed 12/30/05 and amendment filed 1/3/06 (excerpts)
Exhibit 2	WaMu 2006 AR-2 Prospectus and Prospectus Supplement (excerpts)
Exhibit 3	WaMu 2006 AR-1 Prospectus and Prospectus Supplement (excerpts)
Exhibit 4	WaMu 2007 HY-1 Prospectus and Prospectus Supplement (excerpts)
Exhibit 5	WaMu 2006 AR-9 Pooling and Servicing Agreement (excerpts)
Exhibit 6	WaMu 2007 HY-2 Prospectus Supplement (excerpts)
Exhibit 7	Delinquency chart for Certificates owned by Plaintiffs
Exhibit 8	Supporting data for Exhibit 7
Exhibit 9	Press Release, Mortgage Bankers Association, Delinquencies, Foreclosure Starts Fall in Latest MBA National Delinquency Survey (Feb. 19, 2010)
Exhibit 10	Erkan Erturk & Thomas G. Gillis, <i>Transition Study: Structured Finance Rating Transition and Default Update as of Feb. 27, 2009</i> , Standard & Poor's Ratings Direct (Mar. 6, 2009)
Exhibit 11	Mortgage Bankers Association, <i>Housing and Mortgage Markets</i>
Exhibit 12	Emily Freidlander, <i>Yale's Shiller: U.S. Housing Slump May Exceed Great Depression</i> , Wall St. J. Online, Apr. 22, 2008
Exhibit 13	<i>Dropping a Brick</i> , The Economist, May 29, 2008
Exhibit 14	<i>Treasury's Paulson - Subprime Woes Likely Contained</i> , Reuters Bus. & Fin., Apr. 20, 2007
Exhibit 15	Committee on Oversight and Government Reform, <i>The Financial Crisis and the Role of Federal Regulators</i>
Exhibit 16	Committee on Banking, Housing and Urban Affairs, <i>Turmoil in the U.S. Credit Markets</i> , Testimony of Eric Stein
Exhibit 17	U.S. Treasury Department, Testimony of Henry M. Paulson, Jr., Nov. 18, 2008
Exhibit 18	Committee on Oversight and Government Reform, Testimony of David S. Ruder, Nov. 13, 2008
Exhibit 19	<i>New York v. First American Corporation Complaint</i> (N.Y. Sup. Ct. Nov. 1, 2007)
Exhibit 20	Consolidated Class Action Complaint ("WaMu Complaint"), filed Aug. 5, 2008
Exhibit 21	Registration Statement filed 3/13/07 and amendment filed 4/9/07 (excerpts)
Exhibit 22	WMALT 2007 OA-5 Prospectus and Prospectus Supplement (excerpts)
Exhibit 23	WaMu 2006 AR-5 Mortgage Loan Purchase and Sale Agreement (excerpts)
Exhibit 24	Motion (1) For Leave to Amend the Consolidated Complaint; (2) To Deny Defendants' Pending Motions as Moot and Without Prejudice; and (3) To Modify the Court's Scheduling Order
Exhibit 25	WaMu 2006 AR-5 Prospectus and Prospectus Supplement (excerpts)

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 27th day of April, 2010, I electronically filed the foregoing
3 with the Clerk of the Court using the CM/ECF system which will send notification of such
4 filing to the following:

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16 DATED this 27th day of April, 2010 at Seattle, Washington.

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